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Attorney for Defendants  
Larry Nolan, Garry Birch, and Jason Sage

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CORNEALIUS LOPES,  
Plaintiff,

Vs.

FREMONT FREEWHEELERS, et al.,  
Defendants.

Case No.: C 07-6213 PJH

DEFENDANT GARRY BIRCH AND  
JASON SAGE'S MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(6)

Date: June 25, 2008  
Time: 9:00am  
Dept: Courtroom 3, 17<sup>th</sup> Floor  
Judge: Hon. Phyllis J. Hamilton

TO ALL PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE THAT on June 25, 2008 at 9:00 a.m. before Judge  
Phyllis J. Hamilton, located at Courtroom 3, 17<sup>th</sup> floor at 450 Golden Gate Avenue, San  
Francisco, CA 94102, or as soon thereafter as may be heard, Defendant Garry Birch and  
Jason Sage will move this Court to dismiss this action against him under Federal Rules of  
Civil Procedure, Rule 12(b)(6) on the following grounds:

- 1) Defendant Jason Sage moves to dismiss this action on the grounds that res  
judicata bars this complaint;

1 2) Defendants Jason Sage and Garry Birch move to dismiss the complaint since  
2 it is barred by the statutes of limitation;

3 3) Defendants Jason Sage and Garry Birch move to dismiss this action because  
4 the complaint fails to state a claim upon which relief may be granted.

5 This motion is based on this notice of motion, the memorandum of points and  
6 authorities accompanying this motion, the pleadings in this action, the request for judicial  
7 notice of plaintiff's prior criminal prosecution (Alameda Superior Court, Case No.  
8 209109-1) and prior suit against Joseph Dale Wren, et al., (Federal District Court,  
9 Northern District of California, Case No., C 06-03705 CRB), and prior complaint in  
10 Lopes v. Fremont Freewheelers et. al., (Alameda Superior Court, Case No.  
11 HG06260161), and such other and further evidence as may be produced at the time of the  
12 hearing.  
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16 Dated: May 20, 2008

By: /s/ Mark P. Meuser

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